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Philip M. Ginsberg

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EXAMINER

DASS, HARISH T

ART UNIT

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DELIVERY MODE

11/26/2010

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/023,241	Applicant(s) GINSBERG, PHILIP M.	
	Examiner HARISH T. DASS	Art Unit 3695	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 9/20/2010.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 13,23,25,27,32,33,37,43,50-53 and 55-77 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 13,23,25,27,32,33,37,43,50-53 and 55-77 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. This office action is in response to applicant's submission 9/20/2010.

2. ***Status of Office Action: Final***

3. ***Status of Claims:***

Claims 1-12, 14-22, 24, 26, 28-31, 34-36, 38-42, 44-49, 54 are canceled.

Claims 13, 23, 25, 27, 32-33, 37, 43, 50-53, 55-77 are pending.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. ***Claims 13, 23, and 25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gianakouros et al (hereinafter Gianakouros-US 2002/0055901) in view of Pratt (IRS releases rough outline of global trading tax deals; Pratt, tom.; The investment Dealers' Digest: IDD. New York, Apr 18, 1994.) and (Daxim L. Lucas "Trading from wherever, whenever (Online stock investments)"; BusinessWorld; August 20, 2001, Monday) hereinafter Lucas.***

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Re. Claim 25, Gianakouros discloses providing a computer system designed to receive information relating to execution of trades in the financial instruments [Abstract; paragraph 24claim 28], and to determine a commission payable by a customer to a trade, or to apply a credit against commission fees to the customer [see at least - Figure 2; paragraphs 20 “broker will be ... commissionable trade in shortest amount of time”, 57 “the commission is the charge per share ... depends on a number of factors ...broker.”, 80].

Gianakouros does not explicitly disclose pursuant to an agreement between the customer and an operator of the computer system, the agreement providing for commissions payable to a broker of trades in the financial instruments, the commissions to vary based at least in part on customer trading location; and determining the commission for the trade based on the customer trading location.

Pratt discloses the commissions to vary based at least in part customer trading location; and determining the commission for the trade based on the customer trading location. It would have been obvious at the time the invention was made to a person having ordinary skill in the art to combine the disclosures of Gianakouros and Pratt to provide an alternative commission allocations based on the trading location, and it is obvious to a practitioner in the art that the activities at each location is bases on the compensation of key support people and therefore the paying commission based on the location of the broker/agent is most appropriate to compensate for cost of living trading site.

Lucas discloses pursuant to an agreement between the customer and an operator of the computer system, the agreement providing for commissions payable to a broker of trades in the financial instruments. It would have been obvious at the time the invention was made to a person having ordinary skill in the art to combine the disclosures of Gianakouros, Pratt and Lucas to provide a cost effective trading system where the client is charged a flat commission rate with respect to the gross value of the transaction and the broker (service provider) gets a minimum commission rate to make the trading service worthwhile.

Since the claimed invention is merely a combination of old elements, and in the combination each element merely would perform the same function as it did separately, and one of ordinary skill in the art would recognize that the results of the combination were predictable.

Re. Claim 13, Gianakouros discloses method and system, a plurality of communications links designed to communicate trade information to and from a plurality of workstations, the trade information comprising information describing orders in an electronic market for financial instruments offered for sale or bid to buy, at least some of the trade information to be presented to the workstations and a commission processing module designed to receive information relating to execution of trades in the financial instruments, and to determine a commission payable by a customer to a trade, or to apply a credit against commission fees to the customer [see at least - Figure 2; paragraphs 20 “broker will be ... commissionable trade in shortest amount of time”, 57

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“the commission is the charge per share ... depends on a number of factors ...broker.”,
80];

Gianakouros does not explicitly disclose pursuant to an agreement between the customer and an operator of the electronic market, the agreement providing for commissions payable to the electronic market for brokerage of trades in the financial instruments, the commissions to vary based at least in part on the customer trading location.

Pratt discloses the commissions to vary based at least in part on the customer trading location. It would have been obvious at the time the invention was made to a person having ordinary skill in the art to combine the disclosures of Gianakouros and Pratt to provide an alternative commission allocations based on the trading location, and it is obvious to a practitioner in the art that the activities at each location is bases on the compensation of key support people and therefore the paying commission based on the location of the broker/agent is most appropriate to compensate for cost of living trading site.

Lucas et al. discloses pursuant to an agreement between the customer and an operator of the electronic market, the agreement providing for commissions payable to the electronic market [see both pages]. It would have been obvious at the time the invention was made to a person having ordinary skill in the art to combine the disclosures of Gianakouros, Pratt and Lucas to provide a cost effective trading system where the client is charged a flat commission rate with respect to the gross value of the

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transaction and the broker (service provider) gets a minimum commission rate to make the trading service worthwhile.

Since the claimed invention is merely a combination of old elements, and in the combination each element merely would perform the same function as it did separately, and one of ordinary skill in the art would recognize that the results of the combination were predictable.

Re. Claim 23, claim 23 is rejected with same rationale as claim 13.

6. ***Claim 37 is rejected under 35 U.S.C. 103(a) as being unpatentable over Gianakouros in view of Pratt, Lucas and Koppelman.***

Re. Claim 37, Gianakouros discloses a computer system designed to determine a commission payable by a customer to a trade, or to apply a credit against commission fees to the customer [Abstract; paragraph 24; claim 28; paragraphs 20 “broker will be ... commissionable trade in shortest amount of time”, 57 “the commission is the charge per share ... depends on a number of factors ...broker.”, 80 - Supra].

Gianakouros does not explicitly disclose pursuant to an agreement between the customer and an operator of the computer system, the agreement providing for commissions payable to an operator of an electronic trading system for trades in the financial instruments, the commissions to vary based at least in part on customer

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trading location; and storing in the memory of the computer system for offset against future commissions an amount of a reward based at least in part on the customer trading location.

Pratt discloses the commissions to vary based at least in part on the customer trading location. It would have been obvious at the time the invention was made to a person having ordinary skill in the art to combine the disclosures of Gianakouros and Pratt to provide an alternative commission allocations based on the trading location, and it is obvious to a practitioner in the art that the activities at each location is bases on the compensation of key support people and therefore the paying commission based on the location of the broker/agent is most appropriate to compensate for cost of living trading site.

Lucas discloses pursuant to an agreement between the customer and an operator of the computer system, the agreement providing for commissions payable to an operator of an electronic trading system for trades in the financial instruments, It would have been obvious at the time the invention was made to a person having ordinary skill in the art to combine the disclosures of Gianakouros, Pratt and Lucas to provide a cost effective trading system where the client is charged a flat commission rate with respect to the gross value of the transaction and the broker (service provider) gets a minimum commission rate to make the trading service worthwhile.

Koppelman discloses storing in the memory of the computer system for offset against future commissions an amount of a reward based at least in part on the characterized attribute of the trade [Figure 2; Abstract; col. col. 2 line 48 through col. 3

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line 10]. It would have been obvious at the time the invention was made to a person having ordinary skill in the art to combine the disclosures of Gianakouros, Pratt, Lucas and Koppelman to alternative commission agreement based on choice of volume discount, fixed fee, pay based on time and place of the execution and trade and reward policy where desired level of performance earned by the recipients and crediting incentives toward future trading in form of reward.

7. Claim 27 is rejected under 35 U.S.C. 103(a) as being unpatentable over Gianakouros, Pratt and Lucas, as applied to claim 25 above and further in view Koppelman et al. (hereinafter Koppelman – US 6,662,164).

Re. Claim 27, Koppelman discloses assigning at least one of said two customers (buyer/seller) said commission based on allocation rules. Pratt discloses commission based on the location. It would have been obvious at the time the invention was made to a person having ordinary skill in the art to combine the disclosures of Gianakouros, Lucas, Pratt and Koppelman to provide a procedure for informing the client what he is paying for trading and allow him/her to choose to execute a trade or not. Since the claimed invention is merely a combination of old elements, and in the combination each element merely would perform the same function as it did separately, and one of ordinary skill in the art would recognize that the results of the combination were predictable.

8. *Claims 32-33 and 55-69 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gianakouros in view of Pratt and Lucas, as applied to claim 13, 25, 37 above and further in view of Lutnick.*

Re. Claims 32-33, Gianakouros wherein the commission is further based on whether at least one of said two customers was an aggressor side (active) or passive side (passive) during said trade [see at least claim 21], and wherein the commission is further based on a class which includes said financial instrument [paragraph (para.) 23-33 and commission, equity, stocks]. Lutnick further discloses an aggressor side or passive side [table 2]. It would have been obvious at the time the invention was made to a person having ordinary skill in the art to combine the disclosures of Gianakouros, Pratt, Lucas and Lutnick to provide a configuration for the broker to be a default initiator of the trade.

Re. Claims 55-69, Gianakouros discloses sell and buy side of a security (financial instruments similar to said financial instrument being traded by said customer were traded by other customers at the time, day, or location said financial instrument was traded by said customer) and customer for participating in at least part of said trade [abstract; para. 33; 40]. Lutnick discloses trading charges based in part on time,

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location, level of liquidity, and spread [supra, paragraphs 10, 52, 134]. It would have been obvious at the time the invention was made to a person having ordinary skill in the art to modify the disclosure of Gianakouros, Pratt, and Lucas and include commission & fee bases (see above), as discloses by Lutnick, to be paid by the trader as trader and broker have agreed between them to compensate the broker for his/her services.

9. *Claims 43, 50-53, 70-77 are is rejected under 35 U.S.C. 103(a) as being unpatentable over Gianakouros, Pratt and Lucas, as applied to claim 37 above and further in view Koppelman et al. (hereinafter Koppelman – US 6,662,164).*

Re. Claim 43, Gianakouros discloses wherein the commission is further based on whether said customer was the aggressor or passive side during said trade [supra].

Lutnick further discloses an aggressor side or passive side [table 2]. It would have been obvious at the time the invention was made to a person having ordinary skill in the art to combine the disclosures of Gianakouros and Lutnick to provide a configuration for the broker to be a default initiator of the trade.

Re. Claims 50-53 and 70-77, Gianakouros discloses sell and buy side of a security (financial instruments similar to said financial instrument being traded by said customer were traded by other customers at the time, day, or location said financial instrument

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was traded by said customer) and customer for participating in at least part of said trade [abstract; para. 33; 40] and level of liquidity [para. 6, 57].

Lutnick discloses trading charges based in part on time, location, etc as disclosed above. Spread is known, the more the spread more is the commission (income). Gianakouros, Lutnick, or Lucas does not explicitly disclose determining said reward, reward comprises determining whether said customer is a new customer, rewarding said customer for participating in at least part of said trade, and determining a rebate, a credit, or both assigned to said customer. However, assign new customer for rebates and credit (determining whether said customer is a new customer, rewarding said customer for participating in at least part of said trade, and determining a rebate, a credit, or both assigned to said customer) are known. For example, most of stores provide incentive to new customer to apply for store credit card and they will receive 10% credit and rebates for using their cards. It is obvious that to attract new customer and compete with others, store provide these incentives. Koppelman discloses determining said reward, reward [see supra]. It would have been obvious at the time the invention was made to a person having ordinary skill in the art to modify the disclosure of Gianakouros, Lutnick, and Lucas and include the above feature disclosed by Koppelman in order to calculate the rewards and bonus for eligible clients based on clients activity.

Response to Arguments

10. Applicant's arguments with respect to amended claims have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

11. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to **HARISH T. DASS** whose telephone number is (571)272-6793. The examiner can normally be reached on 8:00 AM to 4:50 PM.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kyle Charles can be reached on 571-272-6746. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Harish T Dass/
Primary Examiner, Art Unit 3695

Tuesday, November 23, 2010